

NO PROTEST RECEIVED
SUSPENSE TO DISC.

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Dear Applicant:

We have considered your application for recognition of exemption under section 501(c)(3) of the Internal Revenue Code.

You were incorporated in the State of [REDACTED] on [REDACTED]. Your purposes are stated in your articles of incorporation as "to find the best qualified permanent and loving families for children placed for adoption and to facilitate adoptions and otherwise engage in the practice of adoptions as an agency to the extent allowed by law." Your articles do not contain a section 501(c)(3) purposes limitation and do not contain a section 501(c)(3) dissolution provision.

You handle the adoption and placement of children. You assist birth parents wishing to place children for adoption by providing necessary living expenses, counseling, and medical services. You assist persons seeking to adopt children by providing them counselling when requested, and providing them guidelines for use in going through the adoption process. You presently handle only domestic children, but may in the future handle adoptions of foreign children. All costs for your services are paid by persons seeking to adopt children. You presently have no other sources of income, but state that you may do some fund raising in the future.

You are governed by a three person board of directors. The board consists of [REDACTED], [REDACTED] (wife of [REDACTED]), and [REDACTED]. Both [REDACTED] and [REDACTED] are attorneys. [REDACTED] is a nurse, and holds a Masters Degree in Clinical Counseling. Of the board of directors, only [REDACTED] receives a salary in her role as Executive Director of the organization, which has been set at \$[REDACTED] per year. In [REDACTED], she received a salary of \$[REDACTED]. You also have a four person advisory board that is made up of individuals with expertise in appropriate areas.

[REDACTED] subleases office space to your organization for your offices in [REDACTED] and in [REDACTED]. It is not known if lease charges are consistent with normal rental costs in

those two cities. He also leases office equipment to you for use by your organization. [REDACTED] has provided all legal work for the 83 adoptions that you have handled to date, and receives fees from the adopting parents for that work, the usual charge being \$[REDACTED].

You charge a basic fee of \$[REDACTED] for an application and basic set-up fee. Your agency adoption fee is \$[REDACTED]. Adopting parents also pay the costs of "home study", and living expenses for the biological mother when necessary. All medical expenses for the biological mother during pregnancy and childbirth are paid for by the adopting parents. Court costs and legal fees ranging from \$[REDACTED] to \$[REDACTED] are paid by adopting parents, as are costs of post placement supervision. Finally, [REDACTED] is paid \$[REDACTED] in attorney fees by adopting parents. In certain instances, you offer reduced adoption fees, as in the case of special needs and hard to place children, who are often adopted by families of limited means.

Section 501(c)(3) of the Internal Revenue Code provides in part for the exemption from Federal income tax for organizations organized and operated exclusively for charitable or educational purposes

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational or the operational test, it is not exempt.

Section 1.501(c)(3)-1(b)(1) of the regulations provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization limit the purposes of such organization to one or more exempt purposes, and do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(b)(4) of the regulations provides that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages in activities which accomplish one or more of such exempt purposes specified in

section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the regulations states that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Section 1.501(a)-1(c) of the regulations provides that "private shareholder or individual" as used in section 501 refers to persons having a personal and private interest in the activities of an organization.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more of the purposes specified unless it serves a public rather than a private interest. Thus it is necessary for such organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such interests.

While some charitable purposes may be served by the activities conducted by your organization, it is essentially operated as a business, and is under the control of [REDACTED] by virtue of their being two of the organization's three directors. Remuneration for both of them is determined by the [REDACTED] themselves. [REDACTED] will receive in excess of \$ [REDACTED] per year in legal fees generated by the adoption activities of your organization, which work presumably is only a portion of the legal work done by [REDACTED] in the course of his practice of law in [REDACTED] and [REDACTED]. Additionally, [REDACTED] receives the benefit of lease income from space and equipment leased to your organization in his law offices in [REDACTED] and [REDACTED]. [REDACTED] will receive a salary of \$ [REDACTED] per year in her role as executive director, a figure in excess of the market rate for equivalent positions.

The operation of your organization as it is presently constituted results in inurement of income to [REDACTED] in the form of excessive salary payments, as is prohibited by section 1.501(c)(3)-1(c)(2) of the regulations.

The operation of your organization as it is presently constituted results in substantial private benefit to both [REDACTED] by virtue of the benefit of referred legal work and

[REDACTED]

leasing payments to [REDACTED], and by virtue of excessive salary payments to [REDACTED].

Based on the above, you have not established that you are operated exclusively for charitable purposes. Accordingly, you do not qualify for exempt status under section 501(c)(3) of the Code. Contributions to you are not deductible to you under section 170 of the Code.

You have the right to protest our ruling if you believe that it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement must be submitted within 30 days of the date of this letter and must be signed by one of your officers. You also have a right to a conference in this office after your statement is submitted. If you want a conference, you must request it when you file your protest statement. If you are to be represented by someone who is not one of your officers, he/she must file a proper power of attorney and otherwise qualify under our Conference and Practice requirements.

If you do not protest this proposed ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgement or decree under this section shall not be issued in any proceeding unless the United States Tax Court, the United States Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key District Director. Thereafter, any questions about your Federal income tax status should be addressed to that office. The appropriate State officials will be notified of this action in accordance with section 6104(c) of the Code.

Sincerely yours,

Signed [REDACTED]

[REDACTED]
Chief, Exempt Organizations
Rulings Branch 2

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4-19-76